



ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department for Environmental Protection

Division of Waste Management

(New Administrative Regulation)

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund Reimbursement
Procedures

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140.

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) through (e)
requires the establishment of the procedures to administer the Petroleum Storage Tank
Environmental Assurance Fund (PSTEAF).

Section 1. Applicability. This administrative regulation establishes the eligibility
requirements and procedures for an eligible petroleum storage tank owner or operator to make
application and receive reimbursement from the cabinet to pay the cost of corrective action due
to a release from a petroleum storage tank. Federal and state owned facilities shall not be
eligible for reimbursement from the PSTEAF.

Section 2. Application for Assistance. (1) Within thirty (30) calendar days of a confirmed
release, a petroleum storage tank owner or operator who has received a Certificate of
Registration and Reimbursement Eligibility pursuant to 401 KAR 42:020, or a Certificate of
Eligibility, which indicates that the owner or operator is eligible to participate in the Financial
Responsibility Account or the Petroleum Storage Tank Account, shall complete and submit to

1 the cabinet an "Application for Assistance", DEP 6063 (January 2006) as incorporated in Section
2 26 of this administrative regulation.

3 (2) An owner or operator who has not submitted an Application for Assistance for a
4 confirmed release prior to the effective date of this administrative regulation shall submit a
5 completed "Application for Assistance", DEP 6063 (January 2006), incorporated by reference in
6 this administrative regulation, in order to be eligible for reimbursement.

7 (3) The eligible petroleum storage tank owner or operator shall certify in the Application
8 for Assistance that:

9 (a) A release requiring corrective action from an eligible facility has occurred and has
10 been reported to the cabinet; and

11 (b) A contract has been entered into and submitted in accordance with Section 3 of this
12 administrative regulation.

13 (4) A written notice, in accordance with 401 KAR 42:070, shall be submitted to the
14 applicable regional office at least fourteen (14) calendar days prior to commencement of the
15 permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.

16 (5) The cabinet may request additional information and documentation from the
17 applicant, if necessary to approve the Application for Assistance. Failure by the applicant to
18 provide the requested information and documentation within thirty (30) days of receipt of the
19 request shall cause the application to be denied. A request for an extension of time in which to
20 submit the requested information shall be submitted in writing to the cabinet prior to the
21 deadline. Denial of the Application for Assistance shall not prevent the petroleum storage tank
22 owner or operator from reapplying if the requested documentation becomes available.

(6) If the petroleum storage tank owner or operator meets the requirements of subsections (2) and (3) of this section, the cabinet shall:

(a) Approve the Application for Assistance;

(b) Re-evaluate the eligibility of the owner or operator to receive reimbursement from either the Financial Responsibility Account or the Petroleum Storage Tank Account according to Section 4 of this administrative regulation; and

(c) If the evaluation results in changing the owner's or operator's account placement from the initial placement made prior to the submittal of the Application for Assistance, the cabinet shall issue an amended "Certificate of Registration and Reimbursement Eligibility", DEP 7113 (January 2006), incorporated by reference in 401 KAR 42:020.

Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract from a certified company, if work was initiated on or after July 1, 1999, to be eligible for reimbursement from the cabinet for:

(a) The performance of release investigation, site check or site investigation, for a facility; and

(b) The development and implementation of a corrective action agreement in accordance with Section 17 of this administrative regulation.

(2) The contract shall be obtained and submitted to the cabinet prior to commencing activity, except for those actions directed and documented by the cabinet's Environmental Response Team upon the cabinet's declaration of an environmental emergency.

(3) If a contract is changed or revised, a copy of that contract shall be submitted to the cabinet within thirty (30) days of execution.

Section 4. Account Placement. (1) An owner or operator of a petroleum storage tank shall be eligible to receive reimbursement for corrective action costs and third party claims, incurred on or after April 9, 1990, from the Financial Responsibility Account if the cabinet determines the petroleum storage tank owner or operator to have satisfied the following requirements:

(a) Registered the tanks with the cabinet in accordance with 401 KAR 42:020 prior to the release requiring corrective action;

(b) Maintained UST system release detection as required by 401 KAR 42:040. A petroleum storage tank permanently or temporarily closed, in compliance with 401 KAR 42:070, shall have maintained compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;

(c) Maintained corrosion protection as required by 401 KAR 42:030;

(d) Maintained overfill and spill prevention as required by 401 KAR 42:030 for those tanks in operation after December 22, 1998;

(e) Received a "Certificate of Registration and Reimbursement Eligibility", DEP 7113 (January 2006) for the facility, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued prior to the effective date of this administrative regulation;

(f) Filed a notice of intent form, if applicable, with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirements of 401 KAR 42:070;

(g) Reported the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400 and 401 KAR 42:050;

1 (h) Performed initial abatement procedures as required by the “UST System Release
2 Response and Initial Abatement Requirements Outline” (January 2006), incorporated by
3 reference in 401 KAR 42:060; and

4 (i) With regard to reimbursement for third party claims, has complied with the
5 requirements of 401 KAR 42:300.

6 (2) An owner or operator of a petroleum storage tank who is not eligible for participation
7 in the Financial Responsibility Account, shall be eligible for reimbursement by the Petroleum
8 Storage Tank Account for the cost of corrective action incurred on or after April 9, 1990, if the
9 cabinet determines the petroleum storage tank owner or operator has satisfied the following
10 requirements:

11 (a) Registered the facility with the cabinet in accordance with 401 KAR 42:020;

12 (b) Filed a notice of intent form with the cabinet to permanently close the petroleum
13 storage tanks at the facility (if applicable) or to make a change-in-service (if applicable) to
14 comply with the requirement of 401 KAR 42:070; and

15 (c) Reported a release to the cabinet as required by KRS 224.01-400 and KRS 224.01-
16 405.

17 (3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for
18 third-party coverage.

19 Section 5. Entry Level to the Financial Responsibility Account and Petroleum Storage
20 Tank Account.

21 (1) A petroleum storage tank owner’s or operator’s entry level shall be deducted from the
22 overall reimbursement except as provided in subsections (2) and (3) of this section.

1 (2) An entry level shall not be deducted from the overall reimbursement if the owner or
2 operator participated in the Small Owner Tank Removal Account in accordance with 401 KAR
3 42:330.

4 (3) The entry level shall not be deducted from the overall reimbursement if the owner or
5 operator is directed by the cabinet to perform a site check, in accordance with 401 KAR 42:060,
6 for the facility and the laboratory analyses indicate corrective action is not required at the
7 facility.

8 (4) Upon request by the petroleum storage tank owner or operator, the cabinet shall
9 reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum
10 storage tank owner or operator has:

11 (a) Completed corrective action at the facility within:

- 12 1. 180 days from the discovery of the release, for soil remediation alone; or
13 2. Twenty-four (24) months from the discovery of the release, for groundwater alone or
14 for both soil and groundwater remediation; and

15 (b) Received a no further action letter without additional measures being required.

16 Section 6. Newly Discovered Underground Storage Tank System. (1) A newly
17 discovered underground storage tank system encountered at a facility during the performance of
18 corrective action due to a release from a registered tank shall not affect an owner's or operator's
19 account placement eligibility.

20 (2) The number of newly discovered tanks shall not increase the entry level of the owner
21 or operator.

22 Section 7. Pre-Established Fixed Cost Reimbursement. (1) All reimbursements shall be
23 made on the basis of pre-established fixed costs as established in the "Contractor Cost Outline"

1 (January 2006) incorporated by reference in Section 26 of this administrative regulation, except
2 as provided for in Section 8 through Section 19 of this administrative regulation and 401 KAR
3 42:330.

4 (2)(a) The pre-established fixed cost shall be identified within a written directive issued
5 by the cabinet pursuant to 401 KAR 42:060 and shall be:

6 1. Itemized by the cabinet on the appropriate reimbursement cost worksheets attached to
7 the written directive as identified below:

8 a. "Initial and Intermediate Site Investigation and Site Check for a Facility" worksheet,
9 DEP 6066C (January 2006) incorporated by reference in Section 26 of this administrative
10 regulation; and

11 b. "Final Site Investigation for a Facility" worksheet, DEP 6066D (January 2006)
12 incorporated by reference in Section 26 of this administrative regulation; and

13 2. Considered the final cost for the completion of the written directive and shall serve as
14 an obligation and guarantee of payment in accordance with KRS 224.60-140(5).

15 (b) Fixed cost reimbursement shall be made after the following actions are completed:

16 1. The submittal and approval of an Application for Assistance in accordance with
17 Section 2 of this administrative regulation;

18 2. A determination by the cabinet that the report submitted in response to each written
19 directive is complete and meets the requirements of 401 KAR Chapter 42;

20 3. The submittal of necessary documentation pursuant to the "Contractor Cost Outline"
21 (January 2006) and the required documentation pursuant to Section 26 of this administrative
22 regulation;

1 4. The submittal of signed worksheets provided with the written directive from the
2 cabinet; and

3 (3) The initial fixed cost for over-excavation shall be identified on the "Over-Excavation"
4 worksheet, DEP 6066E (January 2006) incorporated by reference in Section 26 of this
5 administrative regulation. An estimate of the tonnage removed shall be based on the volume and
6 density of material in the proposed excavation area. The cabinet shall convert cubic yards to
7 tons using a density of 1.5 tons per cubic yard. Actual reimbursement shall be based on:

- 8 a. A submittal of weigh tickets; or
- 9 b. The actual area of over-excavation, not to exceed the initial estimate as identified on
10 the "Over-Excavation" worksheet, DEP 6066E (January 2006).

11 (4) Pre-established fixed costs identified by the cabinet for corrective action agreements
12 shall be determined based on the negotiated agreement between the cabinet and petroleum
13 storage tank owner or operator.

14 Section 8. General Requirements for the Submittal of Claims for which there is no Pre-
15 Established Fixed Cost.

16 (1) Any eligible costs for which a directive was issued prior to the effective date of this
17 administrative regulation shall be submitted on the forms in effect at the time the directive was
18 issued.

19 (2) Cost estimates shall be submitted on the appropriate reimbursement cost
20 worksheet(s), and approved by the cabinet, prior to incurring costs for actions not covered in
21 Section 7 or Section 10 of this administrative regulation. The cabinet shall establish a

1 reimbursable amount based on a cost estimate submitted by the contractor, which shall serve as
2 an obligation and guarantee of payment in accordance with KRS 224.60-140(5).

3 (3) The request for reimbursement associated with a written directive that does not
4 include a pre-established fixed cost, issued by the cabinet after the effective date of this
5 administrative regulation, shall be submitted on the appropriate reimbursement cost worksheet as
6 an attachment to the required technical report.

7 (4) The cabinet may require additional information and documentation to determine that
8 an eligible request for reimbursement is necessary and reasonable.

9 (5) If the claim is determined to be deficient, the cabinet shall notify the applicant of the
10 deficiencies. Supplemental information to correct the deficiencies shall be submitted by the
11 applicant and received by the cabinet within thirty (30) days of the receipt of the notice by the
12 applicant. The cabinet shall grant the applicant a thirty (30) day extension if the written request
13 is received within thirty (30) days of receipt of the notice of deficiency.

14 (6) If the applicant fails to correct the deficiency or to supply the additional information
15 required by the cabinet, that portion of the claim shall be denied.

16 (7) The cabinet shall issue a determination pursuant to KRS 224.60-140(7) as to whether
17 the costs submitted in the claim are eligible for reimbursement.

18 (8) All claims shall be submitted within two (2) years after issuance of a no further action
19 letter by the cabinet.

20 Section 9. Claim Submittal for Declared Emergency Actions. (1) Reimbursement for
21 costs incurred to abate an environmental emergency shall be limited to those reasonable and
22 necessary actions as directed and documented by the Environmental Response Team (ERT)
23 under the terms of a declared emergency.

(2) The claim request shall include the following documentation if the costs submitted were initiated after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064 (January 2006);

(b) "Invoice Listing Form", DEP 6065 (January 2006);

(c) "Environmental Response Team Declared Emergency" worksheet, DEP 6066A (January 2006);

(d) Original invoices as required in the "Contractor Cost Outline" (January 2006);

(e) Documentation outlining the specific cabinet directives and dates from ERT; and

(f) Documentation to establish that the petroleum storage tank owner or operator has complied with the administrative regulations or written directives from ERT.

(3) Claims submitted shall be reviewed within thirty (30) days of receipt.

(4) Future reimbursement for actions subsequent to the close of the declared emergency will be contingent upon written directives from the cabinet or entering into a corrective action agreement.

Section 10. Third Party Claims. Third party claims shall be submitted in accordance with 401 KAR 42:300 and shall include the "Third Party Claim Form", DEP 6078 (January 2006).

Section 11. Capital Equipment. (1) A petroleum storage tank owner or operator who has been directed by the cabinet to initiate corrective action that requires the purchase of equipment costing in excess of \$1,000 shall obtain prior approval of the purchase by submitting a "Capital Equipment Pre-approval Purchase/Rental Request", DEP 6071 (January 2006) form.

(2) Reimbursement using the "Capital Equipment Claim Form", DEP 6070 (January 2006) shall be limited to the purchase price, less determined salvage value, as approved by the cabinet.

(3) The cabinet shall approve either the purchase or rental of remediation equipment and shall establish the amount to be reimbursed, in accordance with the "Contractor Cost Outline" (January 2006).

Section 12. Claims for Initial Abatement-Free Product Recovery. (1) Reimbursement requests for costs incurred during initial abatement or free product recovery actions, as directed by the cabinet, shall be submitted to the cabinet as a claim. The claim request shall include the following documentation if the written directive is issued by the cabinet after the effective date of this administrative regulation:

- (a) "Claim Request Form", DEP 6064 (January 2006);
 - (b) "Invoice Listing Form", DEP 6065 (January 2006);
 - (c) "Initial Abatement and Free Product Recovery" worksheet, DEP 6066B (January 2006); and
 - (d) Original invoices as required in the "Contractor Cost Outline" (January 2006).
- (2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.

Section 13. Claims for Quarterly Monitoring Reports and System Maintenance. Reimbursement for costs incurred for quarterly monitoring, system maintenance, and reporting shall be limited to those actions specified in the approved and implemented corrective action plan.

(1) If the work was initiated after the effective date of this administrative regulation claim requests shall include the following documents:

- (a) "Claim Request Form", DEP 6064 (January 2006);
- (b) "Invoice Listing Form", DEP 6065 (January 2006);

(c) "Quarterly Monitoring Reporting and System Maintenance" worksheet, DEP 6066G (January 2006); and

(d) Original invoices as required in the "Contractor Cost Outline" (January 2006).

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.

Section 14. Claims for Optional Soil Removal Outside of the Excavation Zone at the Time of Permanent Closure in Accordance with 401 KAR 42:070. (1) Reimbursement requests for costs incurred for optional soil removal outside of the excavation zone shall be submitted on the "Over-Excavation" worksheet, DEP 6066E (January 2006).

(2) The claim request shall include the following documentation if the costs submitted were incurred after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064 (January 2006);

(b) "Invoice Listing Form", DEP 6065 (January 2006);

(c) "Over-Excavation" worksheet, DEP 6066E (January 2006);

(d) Original invoices as required in the "Contractor Cost Outline" (January 2006); and

(e) Backup documentation required to support each task as required on the worksheet.

Section 15. Claims for Miscellaneous Tasks. (1) The "Miscellaneous Tasks" worksheet, DEP 6066H (January 2006) shall be completed to initiate reimbursement for the following actions:

(a) Non-emergency initial abatement actions pursuant to 401 KAR 42:060 conducted prior to a directive being issued by the cabinet;

(b) Transportation and disposal of drums containing purged water or soil cuttings not reimbursed on a previous claim;

1 (c) Initial review of facility information by a newly contracted certified company and
2 contractor having no previous knowledge of the facility;

3 (d) Decommissioning of cisterns or drinking water wells as required to address conditions
4 at the regulated facility;

5 (e) Monitoring well pad replacement;

6 (f) Tank and line tightness testing, as requested in writing by the cabinet, for corrective
7 action activities;

8 (g) Off-site access agreements, if required by the cabinet;

9 (h) Dye trace tests;

10 (i) Backfill subsidence repair; or

11 (j) Corrective action activities proposed by the petroleum storage tank owner or operator,
12 or directed by the cabinet that are not listed in this administrative regulation.

13 (2) The claim request shall include the following documentation if the incurred costs
14 submitted were initiated after the effective date of this administrative regulation:

15 (a) "Claim Request Form", DEP 6064 (January 2006);

16 (b) "Invoice Listing Form", DEP 6065 (January 2006);

17 (c) "Miscellaneous Tasks" worksheet, DEP 6066H (January 2006);

18 (d) Original invoices as required in the "Contractor Cost Outline" (January 2006); and

19 (e) Backup documentation to support each task as required on the worksheet.

20 (3) Reimbursements shall be contingent upon a determination by the cabinet that the
21 submitted reports are accurate and complete.

22 Section 16. Claims for Facility Restoration. (1) A reimbursement request for costs
23 related to facility restoration shall include the following information:

- 1 (a) "Claim Request Form", DEP 6064 (January 2006);
2 (b) "Invoice Listing Form", DEP 6065 (January 2006);
3 (c) "Facility Restoration" worksheet, DEP 6066I (January 2006);
4 (d) Original invoices as required in the "Contractor Cost Outline" (January 2006);
5 (e) Backup documentation required to support each task as required on the worksheet;
6 and
7 (f) A site map for a facility, to scale, depicting the area impacted by corrective action (for
8 example, over-excavation), the area of facility restoration and photographs of the area before and
9 after facility restoration.

10 (2) Reimbursements shall be contingent upon a determination by the cabinet that the
11 submitted reports are accurate and complete.

12 Section 17. Corrective Action Agreements. At the time the cabinet approves an owner
13 or operator's interim or final corrective action plan pursuant to 401 KAR 42:060, the cabinet and
14 the owner or operator shall for purposes of reimbursement enter into a Corrective Action
15 Agreement which shall set forth:

- 16 (1) Method of reimbursement;
17 (2) Amount to be reimbursed; and
18 (3) Rate or schedule of payment.

19 Section 18. Criteria for Approval of a Claim. (1) A claim with an approved Application
20 for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account
21 shall be reviewed to determine if:

- 22 (a) The corrective action complies with 401 KAR Chapter 42 and written directives from
23 the cabinet;

(b) Each cost is necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42 and written directives from the cabinet;

(c) The claim form is accurate and complete;

(d) All supplemental information has been supplied;

(e) The applicant has complied with Section 25 of this administrative regulation; and

(f) Annual tank fees have been paid as required by KRS 224.60-150.

(2) Reimbursement shall be made by a check remitted to the eligible petroleum storage tank owner or operator.

Section 19. Eligible Reimbursement Rates. Established unit costs and rates for eligible reimbursement are identified in the "Contractor Cost Outline" (January 2006) incorporated by reference in Section 26 of this administrative regulation.

Section 20. Signatures. (1) Forms required by this administrative regulation for which a signature is mandated shall be signed by an eligible petroleum storage tank owner or operator as follows:

(a) For a corporation, by:

1. A president or secretary;

2. The duly authorized representative or agent of the president or secretary if the representative or agent is responsible for overall operation of the facility; or

3. A person designated by the board of directors by means of a corporate resolution.

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, by:

1. A principal;

1 2. Executive officer; or

2 3. Ranking elected official.

3 (2) A claim form or Application for Assistance shall also be signed by:

4 (a) The certified contractor who is responsible for overseeing corrective action, unless
5 corrective action commenced prior to March 1, 1995; and

6 (b) An authorized representative of the certified company, unless corrective action
7 commenced prior to July 1, 1999.

8 (3) The owner or operator shall submit documentary evidence to substantiate the legality of
9 an authorized representative's power of agency or power of attorney.

10 Section 21. Loss of Future Reimbursement Eligibility. (1) A petroleum storage tank
11 owner or operator shall be ineligible to receive future reimbursement from the Financial
12 Responsibility Account or Petroleum Storage Tank Account if the petroleum storage tank owner
13 or operator has:

14 (a) Knowingly or intentionally submitted false or inaccurate information to the cabinet; or

15 (b) Knowingly made a false statement, representation, or certification in an application,
16 reimbursement request, or other document submitted to the cabinet.

17 (2) A cost incurred by, or paid from, the cabinet which is based on false or inaccurate
18 information, a false statement, representation, or certification shall be recovered by the cabinet
19 from the person who asserted the false or inaccurate information, false statement, representation,
20 or certification.

21 (3) The cabinet shall have the right to recover the money paid to a petroleum storage tank
22 owner or operator, or a contractor if:

23 (a) The amount was paid due to an error of the cabinet;

1 (b) The amount was paid due to a mistake, error, or inaccurate information in the claim
2 submitted by the petroleum storage tank owner or operator or in an invoice submitted by a
3 contractor; or

4 (c) A person has obtained reimbursement from the cabinet by fraud or intentional
5 misrepresentation.

6 Section 22. Subrogation. Prior to making reimbursement of a claim, the cabinet shall
7 acquire, by subrogation, the rights of the person receiving reimbursement to recover the amounts
8 paid by the cabinet for the performance of corrective action from the person responsible or liable
9 for the release.

10 Section 23. Facility Inspections. The cabinet may conduct inspections in accordance with
11 KRS 224.60-130(1)(l) to determine the reasonableness and necessity of the costs of corrective
12 action.

13 (1) The cabinet shall be authorized to enter and inspect a facility seeking reimbursement
14 for the costs of corrective action.

15 (2) Refusal to allow a cabinet employee entry and inspection of a facility shall make the
16 owner or operator ineligible for reimbursement. Money previously paid to the petroleum storage
17 tank owner or operator of the facility shall be repaid to, or recovered by, the cabinet.

18 (3)(a) Cabinet personnel shall be present at the facility during all petroleum storage tank
19 permanent closure activities, except as provided in paragraphs (d) and (e) of this subsection;

20 (b) A petroleum storage tank owner or operator shall contact the appropriate Field
21 Operations Branch regional office, by certified mail, to schedule a date to have an inspector
22 present at the facility during petroleum storage tank permanent closure activities. The certified

1 mail notice shall be received a minimum of fourteen (14) calendar days prior to commencement
2 of the permanent closure;

3 (c) If the inspector cannot be present at the facility on the day scheduled by the notice
4 sent as required in paragraph (b) of this subsection, he may, by written notice, require the
5 petroleum storage tank owner or operator to reschedule the permanent closure to a proposed
6 date. This notice must be mailed by the cabinet no later than ten (10) days prior to the date
7 scheduled by the petroleum storage tank owner;

8 (d) If the inspector fails to issue notice to reschedule the permanent closure, or is not
9 present on the day set by the notice, the permanent closure may proceed without penalty; and

10 (e) This provision shall not apply to an emergency removal ordered by the cabinet.

11 (4)(a) A petroleum storage tank owner or operator shall:

- 12 1. Provide an inspector full access to an area or well for the collection of samples;
- 13 2. Split samples obtained at the facility with the cabinet, if required by the inspector;
- 14 3. Resample an area or well for which the result of analytical testing obtained by the
15 cabinet differs significantly from the result obtained by the petroleum storage tank owner or
16 operator; and
- 17 4. Have the burden of proving the validity of analytical results, if a discrepancy remains
18 after resampling.

19 (b) The cabinet shall not reimburse the costs of resampling, if the cabinet determines that
20 proper sampling, sample handling or analytical protocols were not adhered to by the contractor
21 or certified laboratory.

22 (c) Failure to allow sample collection, or to split samples with the cabinet, shall render
23 the owner or operator ineligible for reimbursement.

1 Section 24. Affidavits and Waivers. The following forms shall be submitted to the
2 cabinet prior to reimbursement:

3 (1) "Payment Verification Affidavit Form", DEP 6075 (January 2006); and

4 (2) If required by KRS 224.60-140(18), a "Payment Waiver Form", DEP 6077 (January
5 2006) executed by each affected vendor and subcontractor.

6 Section 25. Account Balance. (1) The unobligated balance of the Financial Responsibility
7 Account shall not be less than \$1,500,000, so as to ensure a \$1,000,000 reserve balance adequate
8 to meet federal financial responsibility requirements for participants in the account and a
9 \$500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS
10 224.60-135. The \$500,000 reserved for the cabinet's emergency abatement actions shall be
11 renewed in that amount annually.

12 (2) If the unobligated balance of the Financial Responsibility Account is \$1,500,000 or
13 less, or the reimbursement of additional claims would cause the unobligated balance of the fund
14 to be less than \$1,500,000, the cabinet shall immediately suspend claim reimbursements and the
15 approval of applications until the unobligated balance is greater than \$1,500,000. When the
16 suspension is lifted, the priority of reimbursement for claims submitted related to an approved
17 application for assistance shall be determined by the date of the claim submittal.

18 Section 26. Incorporation by Reference. (1) The following material is incorporated by
19 reference:

20 (a) "Application for Assistance", DEP 6063 (January 2006);

21 (b) "Claim Request Form", DEP 6064 (January 2006);

22 (c) "Invoice Listing Form", DEP 6065 (January 2006);

23 (d) "Capital Equipment Claim Form", DEP 6070 (January 2006);

- 1 (e) "Capital Equipment Pre-approval Purchase/Rental Request", DEP 6071 (January
2 2006);
- 3 (f) "Payment Verification Affidavit", DEP 6075 (January 2006);
- 4 (g) "Payment Waiver Form", DEP 6077 (January 2006);
- 5 (h) "Environmental Response Team Declared Emergency" worksheet, DEP 6066A
6 (January 2006);
- 7 (i) "Initial Abatement & Free Product Recovery" worksheet, DEP 6066B (January 2006);
- 8 (j) "Initial and Intermediate Site Investigation and Site Check for Facilities" worksheet,
9 DEP 6066C (January 2006);
- 10 (k) "Final Site Investigation for a Facility" worksheet, DEP 6066D (January 2006);
- 11 (l) "Over-Excavation" worksheet, DEP 6066E (January 2006);
- 12 (j) "Quarterly Monitoring Reports and System Maintenance" worksheet, DEP 6066G
13 (January 2006);
- 14 (k) "Miscellaneous Tasks" worksheet, DEP 6066H (January 2006);
- 15 (l) "Facility Restoration" worksheet, DEP 6066I (January 2006);
- 16 (m) "Third Party Claim Form", DEP 6078 (January 2006); and
- 17 (n) "Contractor Cost Outline" (January 2006).

18 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
19 law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort,
20 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays and may
21 also be obtained on the Division of Waste Management's web page located at
22 www.waste.ky.gov.

401 KAR 42:250 is approved for filing.

4-12-2006

Date

John W. Clay
John W. Clay, Deputy Secretary
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director
Division of Waste Management
14 Reilly Road
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS

Administrative Regulation #: 401 KAR 42:250

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: As described in KRS 224.60-Establishes the eligibility requirements and procedures for a petroleum storage tank owner or operator to make application and receive reimbursement for the cost of corrective action due to a release from a petroleum storage tank.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to advise the owners or operators of petroleum storage tanks regarding the procedures to apply for reimbursement of corrective action costs.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures to apply for reimbursement of corrective action costs under 401 KAR Chapter 42.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation explains the eligibility requirements and the reimbursement procedures for a petroleum storage tank owner or operator to recover eligible corrective action costs. This administrative regulation also explains how to utilize the incorporated materials during the process for application or reimbursement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: N/A.
- (b) The necessity of the amendment to this administrative regulation: N/A.
- (c) How the amendment conforms to the context of the authorizing statutes: N/A.
- (d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect those individuals and local government entities that own or operate petroleum storage tanks in the Commonwealth of Kentucky, approximately 14,400. UST contractors performing corrective action in the Commonwealth of Kentucky will also be affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: It is difficult to ascertain the impact of this administrative regulation. Certain aspects of the reimbursement process have been streamlined, which will lessen the efforts and resources

required by the affected entities to obtain reimbursement of eligible corrective action costs. However, other aspects of this administrative regulation place a greater responsibility upon the owner or operator and contractor to control costs and effectively manage corrective action projects.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: There will be no cost associated with implementation of this administrative regulation.
- (b) On a continuing basis: There will be no additional costs associated with implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the collection of the petroleum environmental assurance fee, as described in KRS 224.60-145.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in funding or fees will be required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all owners and operators of USTs.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:250

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This administrative regulation may affect local government entities that own or operate petroleum storage tanks.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This administrative regulation relates to the local government entities that own or operate petroleum storage tanks. 40 CFR Part 280, KRS 224.60-130 and KRS 224.60-140 authorize the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): See below.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE IN
401 KAR 42:250**

I. This administrative regulation incorporates by reference the "Application for Assistance", DEP6063 (January 2006). This document is used by an owner or operator of underground storage tanks to apply for reimbursement of corrective action costs.

This document consists of 2 pages.

II. This administrative regulation incorporates by reference the "Claim Request Form", DEP6064 (January 2006). This document is used by an owner or operator of underground storage tanks to submit corrective action costs to the cabinet for reimbursement.

This document consists of 2 pages.

III. This administrative regulation incorporates by reference the "Invoice Listing Form", DEP6065 (January 2006). This document is used in conjunction with the Claim Request Form for an owner or operator to seek reimbursement of corrective action costs.

This document consists of 1 page.

IV. This administrative regulation incorporates by reference the "Environmental Response Team Declared Emergency", DEP6066A (January 2006). This document is a cost worksheet submitted by an owner or operator to establish the reimbursable costs for declared emergency activities.

This document consists of 8 pages.

V. This administrative regulation incorporates by reference the "Initial Abatement & Free Product Recovery", DEP6066B (January 2006). This document is a cost worksheet submitted by an owner or operator to establish the reimbursable costs for initial abatement or free product recovery activities.

This document consists of 5 pages.

VI. This administrative regulation incorporates by reference the "Initial and Intermediate Site Investigation and Site Check for Facilities", DEP6066C (January 2006). This document is a cost worksheet submitted by an owner or operator to establish the reimbursable costs for initial or intermediate site investigation activities.

This document consists of 6 pages.

VII. This administrative regulation incorporates by reference the "Final Site Investigation for a Facility", DEP6066D (January 2006). This document is a cost worksheet submitted by an owner or operator to establish the reimbursable costs for final site investigation activities.

This document consists of 4 pages.

VIII. This administrative regulation incorporates by reference the "Over-Excavation", DEP6066E (January 2006). This document is a cost worksheet submitted by an owner or operator to establish the reimbursable costs for over-excavation activities.

This document consists of 7 pages.

IX. This administrative regulation incorporates by reference the "Quarterly Monitoring Reports & System Maintenance", DEP6066G (January 2006). This document is a cost worksheet submitted by an owner or operator to establish the reimbursable costs for sampling, operation & maintenance activities.

This document consists of 4 page.

X. This administrative regulation incorporates by reference the "Miscellaneous Tasks", DEP6066H (January 2006). This document is a cost worksheet submitted by an owner or operator to establish the reimbursable costs for miscellaneous task activities.

This document consists of 4 pages.

XI. This administrative regulation incorporates by reference the "Facility Restoration", DEP6066I (January 2006). This document is a cost worksheet submitted by an owner or operator to establish the reimbursable costs for declared emergency activities.

This document consists of 3 pages.

XII. This administrative regulation incorporates by reference the "Capital Equipment Claim Form", DEP6070 (January 2006). This document is submitted by an owner or operator of UST's to seek reimbursement of capital equipment expenses exceeding \$1,000.00.

This document consists of 2 pages.

XIII. This administrative regulation incorporates by reference the "Capital Equipment Pre-Approval Purchase/Rental Request", DEP6071 (January 2006). This document is submitted by an owner or operator of UST's to obtain pre-approval of the rental or purchase of a capital equipment expenses exceeding \$1,000.00.

This document consists of 2 pages.

XIV. This administrative regulation incorporates by reference the "Payment Verification Affidavit", DEP6075 (January 2006). This document is submitted by an owner or operator to affirm that they have either paid a corrective action costs or have listed the cost on the form.

This document consists of 1 page.

XV. This administrative regulation incorporates by reference the "Payment Waiver Form", DEP6077 (January 2006). This document notifies the cabinet that a subcontractor or vendor incurring corrective action costs will accept the due course process to obtain reimbursement from the Petroleum Storage Tank Environmental Assurance Fund.

This document consists of 2 pages.

XVI. This administrative regulation incorporates by reference the "Third-Party Claim Form", DEP6078 (January 2006). This document is submitted by an owner or operator to seek reimbursement of eligible third party costs incurred from a petroleum release.

This document consists of 2 pages.

XVII. This administrative regulation incorporates by reference the "Contractor Cost Outline", (January 2006). This document establishes the reimbursable costs for declared emergency activities.

This document consists of 18 pages.